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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/554,107

10/21/2005

Masaaki Mochimaru

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1444 7590 07/08/2008
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EXAMINER

DURHAM, NATHAN E

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

07/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/554,107	Applicant(s) MOCHIMARU ET AL.	
	Examiner NATHAN E. DURHAM	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 7 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/21/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

The abstract of the disclosure is objected to because it is too long and contains more than 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Within the first paragraph of claim 1, the applicant recites “a measurement unit that measures a human body shape A, a human body shape B and a product shape C”. However, applicant’s claimed 2 includes the recitation that “the measurement unit only measures the human body shape B” wherein the human body shape A includes standard human body shape data and product shape C includes product shape data. The statement in claim 2 appears to be contradicting to the language of claim 1. How is

the human body shape A, the human body shape B and the product shape C being measured by the measurement unit, but only the human body shape B is being measured? It is therefore unclear what the applicant is claiming within claim 1. Claims 3-4 depend from claim 1 and are therefore also rejected under 35 U.S.C. 112, second paragraph.

Claim Objections

Claim 2 is objected to because of the following informalities: Within the fifth line of the claim, it appears that the phrase “the product shape C data” should not include the term “data”. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 6 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The descriptions or expressions of programs are not physical “things”. They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structure and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program’s functionality to be realized (MPEP 2106).

Allowable Subject Matter

Claims 5 and 7 allowed.

Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. Claims 2-4 depend from claim 1 and therefore would also be allowable if claim 1 is amended to overcome the 35 U.S.C. 112, second paragraph, rejection.

The following is a statement of reasons for the indication of allowable subject matter: Claims 5 and 7 (and possibly claim 1 if the 35 U.S.C. 112, second paragraph, rejection is overcome) are considered allowable subject matter because the prior art fails to disclose the limitations of the independent claims in combination with a pre-processing unit converting the measured shapes into data expressing the human body shape A and human body shape B "with the same number of coordinate points on an identical geometric structure" wherein a calculation unit calculates a deformed grid in which "a deviation between a circumferential length of a cross-section H determined according to the product shape C and a target circumferential length of the cross-section are minimized at a time".

Conclusion

The prior art made of record, as cited on attached PTO-892, and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHAN E. DURHAM whose telephone number is

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(571)272-8642. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NED

/Gary L. Welch/

Supervisory Patent Examiner, Art Unit 3765